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*A School's Guide to
Purchasing
Washington-Grown
Food*

Government Documents

Legislative History Related to Farm to School

1946: National School Lunch Act

On June 4, 1946, President Harry S. Truman signed the National School Lunch Act (NSLA), which permanently authorized the National School Lunch Program. The legislation was passed in response to concerns that “many American men had been rejected for World War II military service because of diet-related health problems.” Its purpose was to provide a market for agricultural production and to improve the health and well-being of the nation’s youth.

1966: Child Nutrition Act

On October 11, 1966, President Lyndon B. Johnson signed the Child Nutrition Act (CNA), which added a new dimension to school food services. In its Declaration of Purpose in Section 2 of the Act, the Congress stated, "In recognition of the demonstrated relationship between food and good nutrition and the capacity of children to develop and learn, based on the years of cumulative successful experience under the NSLP with its significant contributions in the field of applied nutrition research, it is hereby declared to be the policy of Congress that these efforts shall be extended, expanded, and strengthened under the authority of the Secretary of Agriculture as a measure to safeguard the health and well-being of the Nation's children, and to encourage the domestic consumption of agricultural and other foods, by assisting States, through grants-in-aid and other means, to meet more effectively the nutritional needs of our children.” CNA expanded the NSLP, established the School Breakfast Program (SBP), extended the Special Milk Program (SMP), and provided Federal funding assistance towards non-food purchases for school equipment.

2002: Farm Security & Rural Investment Act

The Farm Security and Rural Investment Act of 2002, known as the 2002 Farm Bill, authorized the Fresh Fruit and Vegetable Pilot in four states and one Indian Tribal Organization (Zuni, New Mexico). The purpose of the pilot was to determine the best practices for increasing fruit—both fresh and dried—and fresh vegetable consumption in schools. The Pilot is now known as the Fresh Fruit and Vegetable Program.

2004: Child Nutrition and WIC Reauthorization Act

The Child Nutrition and WIC Reauthorization Act of 2004 amended the NSLA to encourage improved access to local foods in schools “through farm-to-cafeteria activities, including school gardens, that may include the acquisition of food and appropriate equipment and the provision of training and education.” The Act required every school district participating in the NSLP and/or SBP to establish a local wellness policy by the start of the 2006-2007 school year. Additionally, it required schools to set goals for nutritional standards of foods available in schools, nutrition education, physical activity, and other school-based activities designed to promote student wellness. The legislation requires that a broad group of local stakeholders be involved in designing the policy to ensure that the diverse needs of the community are met, including members of the school board, school administrators, representatives of the school food authority, parents, students, and members of the public.

2006: Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act

This act appropriated a one-time funding of \$6,000,000 to further expand the FFVP to include: Utah, Wisconsin, New Mexico, Texas, Connecticut, and Idaho. Currently, the FFVP is nation-wide in selected schools in 50 states, the District of Columbia, Guam, Puerto Rico and the Virgin Islands.

2008: Consolidated Appropriations Act

This Act expanded FFVP nationwide in selected schools in all 50 states, the District of Columbia, Guam, Puerto Rico and the Virgin Islands. It also provided approximately \$9.9 million to begin program operations for School Year 2008-2009.

2008: Food, Conservation, and Energy Act

The Food, Conservation, and Energy Act of 2008, known as the 2008 Farm Bill, amended the NSLA to allow institutions receiving funds through the Child Nutrition Programs to apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products. This applies to operators of all of the Child Nutrition Programs, including the NSLP, SBP, FFVP, SMP, Child and Adult Care Food Program (CACFP), and Summer Food Service Program (SFS), as well as to purchases of fresh produce for these programs by the Department of Defense (DoD). In addition to this, the Farm Bill also:

- Retains the minimum of \$50 million annually for purchase of fresh fruits and vegetables for use in schools and service institutions participating in programs under NSLA, and allows that these amounts may continue to be spent through DoD Fresh Program;
- Clarifies that nutrition education under an NSLA "farm to cafeteria" pilot program should promote healthy food education;
- Gives priority to projects that can be replicated in other schools; and
- Authorizes hands-on gardening pilot programs at "high-poverty" schools in up to five States.¹

2009: Agriculture Appropriations Act for FY 2010

The Agriculture Appropriations Act—which provides funding for most of USDA's programs—has many positive impacts. The Act increased investment in rural communities to create wealth, utilizing resources to help focus USDA initiatives on renewable energy, broadband infrastructure, and local and regional food systems; increased access to safe and nutritious food by providing funds necessary to meet the demand for USDA's nutrition assistance programs to promote healthier diets; and provided funding for a school community garden pilot program authorized under Section 18(g)(3) of the NSLA.

¹ See www.ers.usda.gov/FarmBill/2008/titles/titleIVNutrition.htm

2010: Healthy Hunger-Free Kids Act

In December of 2010, the Healthy, Hunger-Free Kids Act was signed into law. This Act authorized and funded USDA to provide technical assistance and competitive matching farm to school grants. The grants may be used for training, supporting operations, planning, purchasing equipment, developing school gardens, developing partnerships and implementing farm to school activities. According to the Act, individual grants are not to exceed \$100,000. Highest priority will be given to those projects that make local foods available on the menu; serve a high proportion of children who are eligible for free or reduced-price lunches; encourage the participation of school children in farm and garden-based agricultural education activities; demonstrate collaboration between schools, nongovernmental and community-based organizations, agricultural producer groups, and other community partners; include adequate and participatory evaluation plans; and demonstrate the potential for long-term program sustainability. USDA will receive five million dollars in October of 2012 (i.e., fiscal year 2013) through fiscal year 2015 to administer these grants and provide technical assistance.

Rules and Regulations

Federal Register

Vol. 76, No. 78

Friday, April 22, 2011

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 215, 220, 225, and 226 RIN 0584-AE03

Geographic Preference Option for the Procurement of Unprocessed Agricultural Products in Child Nutrition Programs

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: The 2008 Farm Bill amended the Richard B. Russell National School Lunch Act to direct that the Secretary of Agriculture encourage institutions operating Child Nutrition Programs to purchase unprocessed locally grown and locally raised agricultural products. Effective October 1, 2008, institutions receiving funds through the Child Nutrition Programs may apply an optional geographic preference in the procurement of unprocessed locally grown or locally raised agricultural products. This provision applies to institutions in all of the Child Nutrition Programs, including the National School Lunch Program, School Breakfast Program, Fresh Fruit and Vegetable Program, Special Milk Program for Children, Child and Adult Care Food Program and Summer Food Service Program, as well as to purchases made for these programs by the Department of Defense Fresh Program. The provision also applies to State agencies making purchases on behalf of any of the aforementioned Child Nutrition Programs. The purpose of this rule is to finalize the geographic preference option in Child Nutrition Programs.

DATES: This rule is effective May 23, 2011.

FOR FURTHER INFORMATION CONTACT: Julie Brewer, Chief, Policy and Program

Development Branch, Child Nutrition Division, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia 22302, or by telephone at (703) 305-2590.

SUPPLEMENTARY INFORMATION:

Background

Section 4302 of Public Law 110-246, the Food, Conservation, and Energy Act of 2008, amended section 9(j) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(j)) to require the Secretary of Agriculture to encourage institutions operating Child Nutrition Programs to purchase unprocessed locally grown and locally raised agricultural products. Pursuant to section 4407 of Public Law 110-246, beginning October 1, 2008, institutions receiving funds as participants in the Child Nutrition Programs may apply an optional geographic preference in the procurement of unprocessed locally grown or locally raised agricultural products. This provision applies to institutions operating all of the Child Nutrition Programs, including the National School Lunch Program, School Breakfast Program, Fresh Fruit and Vegetable Program, Special Milk Program, Child and Adult Care Food Program and Summer Food Service Program, as well as to purchases made for these programs by the Department of Defense Fresh Program. The provision does not apply to purchases made by the Department. However, the provision does also apply to State agencies making purchases on behalf of any of the aforementioned Child Nutrition Programs. The provisions were initially implemented through policy memoranda and explanatory question and answer communications dated January 9, 2009, July 22, 2009, and October 9, 2009.

The Department published a proposed rule on April 19, 2010, at 75 FR 20316 to solicit comments on the incorporation of this procurement option in Child Nutrition Program regulations. The rule also served to define the term “unprocessed locally grown or locally raised agricultural products” to ensure that both the intent of Congress in providing for such a procurement option was met and that any such definition would facilitate ease of implementation for institutions participating in the Child Nutrition Programs. The comment period ended

on June 18, 2010. The Department received 77 comments on the proposed rule. The following discussion provides information on the comments as well as a discussion of the clarifications and changes made to the proposal based on the comments received.

General Comments

In general, the comments received by the Department were very supportive of the regulation as proposed. Fifty-eight comments commended the Department for clarifying previous interpretations of the geographic preference option for procurement. Forty-four commentors stated that they believed the updated language of the rule more closely complied with the Congressional Conference Report language that indicated that there is no intent to preclude “de minimus handling and preparation such as necessary to present an agricultural product to a school food authority in a useable form.” Forty-seven comments supported the provision of the rule allowing the purchasing entity, such as local school food authorities, to determine the local area to which a geographic preference will be applied, indicating that they agreed with the Department’s view that individual circumstances and product availability leads to the most successful local and regional procurement programs.

Procurement Issues

As indicated in the proposed rule, traditionally, a geographic preference established for procurements provides bidders located in a specified geographic area additional points or credit calculated during the evaluation of the proposals or bids received in response to a solicitation. A geographic preference is not a procurement set-aside for bidders located in the specified geographic area, guaranteeing them a certain level or percentage of business. In addition, including a geographic preference in a procurement does not preclude a bidder from outside the specified geographic area from competing for, and possibly being awarded, the contract subject to the geographic preference. Rather, a geographic preference is a tool that gives bidders in a specified geographic area a specific, defined advantage in the procurement process. We received a number of comments specifically

requesting guidance on how to apply the geographic preference option in procurement specifications and procedures as well as questions on procurement processes in general. The Department published a policy memorandum for program cooperators on general procurement and geographic preference issues on February 1, 2011 and will be publishing additional guidance on procurement provisions associated with implementation of the geographic preference option included in this final rule as needed. Therefore, no changes have been made to the procurement-specific provisions included in the proposed rule and those procurement provisions are finalized as proposed.

Geographic Area

By utilizing the statutorily established geographic preference option in Child Nutrition Programs, purchasing institutions, such as States, school food authorities, child care institutions and Summer Food Service Program (SFSP) sponsors, may specifically identify the geographic area within which unprocessed locally raised and locally grown agricultural products will originate. As indicated in the proposed rule, a responsive bidder would offer to provide unprocessed locally raised and locally grown agricultural products from the specifically identified geographic area. In most cases, we would expect that a bidder would be located in the identified geographic area, though it is possible for a responsive bidder to be located outside of that area. These procurements may be accomplished through informal or formal procurement procedures, as required by respective Child Nutrition Program regulations.

The proposed rule provided for allowing institutions operating the Child Nutrition Programs to specifically define geographic areas from which they will seek to procure unprocessed local agricultural products. It was proposed that each institution, whether it be a school food authority, a child care institution or an SFSP sponsor, determine how to define the geographic area. As indicated previously, 47 comments supported allowing the purchasing entity to define the local area in which the geographic preference option will be applied. No objections to this provision were received, therefore it is finalized in this rule as proposed.

One comment specifically recommended that the “Buy American” provisions of § 210.21 and § 220.16 of the National School Lunch Program and School Breakfast Program regulations be specifically noted in this amendment to those programs regulations. In response

to that comment, the Department reiterates that all other regulatory requirements of the Child Nutrition Programs must be complied with when implementing the geographic preference option. When specifying the local area from which items will be purchased using the geographic procurement option, purchasing entities must ensure that the “Buy American” requirements of the regulations are complied with and included in the procurement specifications. No change, however, has been made in the regulatory language of this final rule.

Definition of Unprocessed Agricultural Products

As provided in the Joint Explanatory Statement of the Committee of Conference in House Report 110–627, the term “unprocessed” precludes the use of geographic preference in procuring agricultural products that have significant value added components. The Conference report also noted the acceptability of *de minimus* handling and preparation “such as may be necessary to present an agricultural product to a school food authority in a useable form, such as washing vegetables, bagging greens, butchering livestock and poultry, pasteurizing milk, and putting eggs in a carton.”

For the purpose of implementing the geographic preference procurement option in the Child Nutrition Programs, the Department proposed a definition of “unprocessed agricultural products.” The guiding principles in developing the definition were that the definition should:

- (1) Comply with the language and reflect the intent of the statute;
- (2) Ensure that any processing of agricultural products results in only minimal value added to such products; and
- (3) Facilitate ease of use of such products for institutions.

The definition of “unprocessed agricultural products” included in the proposed rule specifically prohibited any processing method that alters the inherent character of the agricultural product. To that end, we included in the proposed definition a list of acceptable food handling and preservation techniques for purposes of applying the geographic preference procurement option. Such techniques included: General heat transfer methods such as cooling, refrigerating and freezing; size adjustment through size reduction (peeling, slicing, dicing, cutting and grinding); drying/dehydration; washing; vacuum packing and bagging; pasteurization for milk; the application of high water pressure (“cold

pasteurization”); butchering of livestock and poultry and the cleaning of fish. The Department asserted that these handling and preservation techniques both complied with the intent of the statute and did not alter the inherent character of agricultural products subjected to them.

While two commentors supported the definition as proposed, a number of comments regarding the food handling and preservation techniques included in the definition were received. The following discussion outlines those comments by issue and the decisions made by the Department in response to the comments in this final rule.

Combination Packages of Vegetables and Fruits

Fifty comments were received expressing support for the addition of combination packages of local, frozen, bagged vegetables such as zucchini and summer squash or fresh vegetable roast packages such as winter squash, turnips and beets. The commentors indicated that the “inherent character” of the vegetables is not being altered in any way when packaged in such a manner and fits within the “*de minimus*” handling and preparation requirements intended by Congress. In addition, such packaging conforms with the language of the statute with regard to presenting the product in usable form. The Department agrees with the comments and, therefore, has revised the definition of “unprocessed agricultural products” to include such combination packaged items in this final rule.

Frozen Products

One commentor indicated that frozen products should be included in the definition. The proposed rule included frozen products and the final rule retains frozen products as acceptable as a preservation technique. Two comments were received requesting that, in order to ensure that flash frozen products are included in the definition, the Department specify Individually Quick Frozen (IQF) as an acceptable preservation technique. The final rule retains inclusion of frozen products as acceptable but the Department does not wish to include specific techniques for freezing since technology changes over time and such specific references to technique may necessitate future amendments to the regulation in response to changes in technology.

Canned and Other Heat Preserved Products

Three comments were received requesting that canned products be included in the definition of

“unprocessed agricultural products.” One commentor wanted to allow pasteurized cider and pickled products to be considered “unprocessed” for purposes of specifying a geographic preference for procurement. While canned, pickled and pasteurized products are acceptable for service in the Child Nutrition Programs, such products would not be considered to be subject to a geographic procurement preference because heat processing does not meet the “de minimus” standard of processing established by Congress as assessed by the Department. Therefore, no change in this regulation has been made in response to these comments.

Formed Products

Fifty comments were received supporting allowing foods such as ground beef and other meat patties to be included in the definition of “unprocessed agricultural products”. Those comments assert that such products have been handled in a manner consistent with “de minimus” exceptions in that they are ground then formed similar to cutting carrots into sticks or coin shapes. The commentors indicated that contracting separately for further processing of ground meat products which does not change the inherent character of that product would be costly and time consuming for the purchasing entities. Five other commentors recommended allowing meat patties made with pure meat and containing no fillers or additives as meeting the criteria for geographic preference procurement. The Department agrees with these commentors and has revised the definition to include formed products that contain no additives or fillers as acceptable for purchase using the geographic preference procurement option.

Other Products

Forty-one comments were received recommending that cutting chicken or other meat into fajita strips and filleting fish be allowed as acceptable as meeting the definition of “unprocessed agricultural products”. The Department wishes to point out that fish filets would be considered to be “cleaned” and cut, and slicing products into strips would be considered to be “cut”, both of which are included in the definition as proposed. One commentor requested that ground flour be allowed to be considered as acceptable. The Department wishes to clarify that ground products are allowed and that the grinding of grain into flour would be considered to be acceptable as a ground product subject to the geographic

preference procurement option. Therefore, there is no change to the definition in response to these comments.

Preservatives

Forty-six comments were received requesting clarification as to whether or not preservatives were allowed in products subject to the geographic preference procurement option. Specifically, they requested clarification as to whether or not ascorbic acid to hold color or prevent oxidation once a fruit or vegetable product was cut or chopped was acceptable. The Department agrees that this should be addressed and has provided for the addition of ascorbic acid and/or other preservatives that retain the color of a product or prevent oxidation to the definition of “unprocessed agricultural products”. However, no other preservatives used for any other purpose are considered to be acceptable.

Packaging

One commentor requested that portion packaging be explicitly recognized as meeting the requirements of the rule. The Department wishes to point out that packaging is recognized as allowable with regard to the definition of “unprocessed agricultural products”. The size of such packaging included in the procurement specifications is made at the discretion of the purchasing entity. Therefore, no change in response to this comment has been made in this final rule.

High Water Pressure Cold Pasteurization

One commentor expressed concern that the term “high water pressure cold pasteurization” included in the definition of “unprocessed agricultural product” could be interpreted to mean irradiation. The Department’s intent was to use this term in the definition to reference a washing technique. Since “washing” is already included in the definition of “unprocessed locally grown or locally raised agricultural products” and in response to this comment, the term “high water pressure (cold pasteurization)” is removed from the definition.

This final rule prohibits the application of the geographic preference procurement option for products subjected to processing methods not included in the definition of “unprocessed agricultural products”.

This final rule adds new paragraphs to §§ 210.21, 215.14a, 220.16, 225.17 and 226.22 of Title 7, CFR, to include the geographic preference procurement option and define the term

“unprocessed locally grown or locally raised agricultural products”.

Applicability to the Fresh Fruit and Vegetable Program

The geographic preference procurement option is applicable to purchases made in the Fresh Fruit and Vegetable Program, 42 U.S.C. 1769a (FFVP). However, this provision shall only be applied within the context of the FFVP’s requirement that produce utilized in the program be fresh. The definition of “unprocessed locally grown or locally raised agricultural products” does not change the basic statutory requirement that only fresh produce may be purchased using funds for the Fresh Fruit and Vegetable Program. Development of regulations pertaining to the requirements for the Fresh Fruit and Vegetable Program are currently in process and the provisions relating to the geographic preference procurement option will be included in that proposed rule, as appropriate.

Executive Order 12866

This rule has been determined to be not significant and was not reviewed by the Office Management and Budget in conformance with Executive Order 12866.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). It has been certified that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under Section 202 of the UMRA, the Department generally must prepare a written statement, including a cost/benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures to State, local, or Tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. This rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) that

impose costs on State, local, or Tribal governments or to the private sector of \$100 million or more in any one year. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The National School Lunch Program and the School Breakfast Program are listed in the Catalog of Federal Domestic Assistance under No. 10.555 and 10.553, respectively. The Special Milk Program is listed under No. 10.556. The Child and Adult Care Food Program is listed under No. 10.558 and the Summer Food Service Program for Children is listed under No. 10.559. For the reasons set forth in the final rule in 7 CFR Part 3015, Subpart V and related Notice (48 FR 29115, June 24, 1983), these programs are included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Executive Order 13132

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132. The Food and Nutrition Service (FNS) has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under Section 6(b) of the Executive Order, a federalism summary impact statement is not required.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless specified in the **DATES** section of the final rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this rule in accordance with Departmental Regulations 4300-4, "Civil Rights Impact Analysis," and 1512-1, "Regulatory Decision Making Requirements." After a careful review of the rule's intent and provisions, FNS has determined that this rule is not intended to limit or reduce in any way the ability of protected classes of individuals to receive benefits on the basis of their race, color, national origin, sex, age or disability nor is it intended to have a differential impact on minority owned or operated business establishments, and woman- owned or operated business establishments that participate in the Child Nutrition Programs. This rule simply allows institutions that participate in the Child Nutrition Programs the option to apply a geographic preference should such institutions wish to procure unprocessed locally grown or locally raised agricultural products.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR part 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This rule does not contain information collection requirements subject to approval by OMB under the Paperwork Reduction Act of 1995.

E-Government Act Compliance

The Food and Nutrition Service is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Executive Order 13175

E.O. 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. In late 2010 and early 2011, USDA engaged in a series of consultative

sessions to obtain input by Tribal officials or their designees concerning the impact of this rule on the Tribe or Indian Tribal governments, or whether this rule may preempt Tribal law. Reports from these consultations will be made part of the USDA annual reporting on Tribal Consultation and Collaboration. USDA will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule and will provide additional venues, such as webinars and teleconferences, to periodically host collaborative conversations with Tribal officials or their designees concerning ways to improve this rule in Indian country.

We are unaware of any current Tribal laws that could be in conflict with this final rule.

List of Subjects

7 CFR Part 210

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Penalties, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

7 CFR Part 215

Food assistance programs, Grant programs—education, Grant programs—health, Infants and children, Milk, Reporting and recordkeeping requirements.

7 CFR Part 220

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Reporting and recordkeeping requirements, School breakfast and lunch programs.

7 CFR Part 225

Food assistance programs, Grant programs—health, Infants and children, Labeling, Reporting and recordkeeping requirements.

7 CFR Part 226

Accounting, Aged, Day care, Food assistance programs, Grant programs, Grant programs—health, Indians, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR Parts 210, 215, 220, 225, and 226 are amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

■ 1. The authority citation for 7 CFR Part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

Subpart E—State Agency and School Food Authority Responsibilities

- 2. In § 210.21, paragraph (g) is added to read as follows:

§ 210.21 Procurement.

* * * * *

(g) *Geographic preference.* (1) A school food authority participating in the Program, as well as State agencies making purchases on behalf of such school food authorities, may apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products. When utilizing the geographic preference to procure such products, the school food authority making the purchase or the State agency making purchases on behalf of such school food authorities have the discretion to determine the local area to which the geographic preference option will be applied;

(2) For the purpose of applying the optional geographic procurement preference in paragraph (g)(1) of this section, “unprocessed locally grown or locally raised agricultural products” means only those agricultural products that retain their inherent character. The effects of the following food handling and preservation techniques shall not be considered as changing an agricultural product into a product of a different kind or character: Cooling; refrigerating; freezing; size adjustment made by peeling, slicing, dicing, cutting, chopping, shucking, and grinding; forming ground products into patties without any additives or fillers; drying/dehydration; washing; packaging (such as placing eggs in cartons), vacuum packing and bagging (such as placing vegetables in bags or combining two or more types of vegetables or fruits in a single package); the addition of ascorbic acid or other preservatives to prevent oxidation of produce; butchering livestock and poultry; cleaning fish; and the pasteurization of milk.

PART 215—SPECIAL MILK PROGRAM FOR CHILDREN

- 3. The authority citation for 7 CFR Part 215 continues to read as follows:

Authority: 42 U.S.C. 1772 and 1779.

- 4. In § 215.14a, paragraph (e) is added to read as follows:

§ 215.14a Procurement standards.

* * * * *

(e) *Geographic preference.* A school food authority participating in the Program may apply a geographic preference when procuring milk. When

utilizing the geographic preference to procure milk, the school food authority making the purchase has the discretion to determine the local area to which the geographic preference option will be applied.

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PART 220—SCHOOL BREAKFAST PROGRAM

- 5. The authority citation for 7 CFR Part 220 continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

- 6. In § 220.16, paragraph (f) is added to read as follows:

§ 220.16 Procurement.

* * * * *

(f) *Geographic preference.* (1) School food authorities participating in the Program, as well as State agencies making purchases on behalf of such school food authorities, may apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products. When utilizing the geographic preference to procure such products, the school food authority making the purchase or the State agency making purchases on behalf of such school food authorities have the discretion to determine the local area to which the geographic preference option will be applied;

(2) For the purpose of applying the optional geographic preference in paragraph (f)(1) of this section, “unprocessed locally grown or locally raised agricultural products” means only those agricultural products that retain their inherent character. The effects of the following food handling and preservation techniques shall not be considered as changing an agricultural product into a product of a different kind or character: Cooling; refrigerating; freezing; size adjustment made by peeling, slicing, dicing, cutting, chopping, shucking, and grinding; forming ground products into patties without any additives or fillers; drying/dehydration; washing; packaging (such as placing eggs in cartons), vacuum packing and bagging (such as placing vegetables in bags or combining two or more types of vegetables or fruits in a single package); addition of ascorbic acid or other preservatives to prevent oxidation of produce; butchering livestock and poultry; cleaning fish; and the pasteurization of milk.

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PART 225—SUMMER FOOD SERVICE PROGRAM

- 7. The authority citation for 7 CFR Part 225 continues to read as follows:

Authority: Secs. 9, 13 and 14, Richard B. Russell National School Lunch Act, as amended, (42 U.S.C. 1758, 1761 and 1762a).

- 8. In § 225.17, paragraph (e) is added to read as follows:

§ 225.17 Procurement standards.

* * * * *

(e) *Geographic preference.* (1) Sponsors participating in the Program may apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products. When utilizing the geographic preference to procure such products, the sponsor making the purchase has the discretion to determine the local area to which the geographic preference option will be applied;

(2) For the purpose of applying the optional geographic preference in paragraph (e)(1) of this section, “unprocessed locally grown or locally raised agricultural products” means only those agricultural products that retain their inherent character. The effects of the following food handling and preservation techniques shall not be considered as changing an agricultural product into a product of a different kind or character: Cooling; refrigerating; freezing; size adjustment made by peeling, slicing, dicing, cutting, chopping, shucking, and grinding; forming ground products into patties without any additives or fillers; drying/dehydration; washing; packaging (such as placing eggs in cartons), vacuum packing and bagging (such as placing vegetables in bags or combining two or more types of vegetables or fruits in a single package); addition of ascorbic acid or other preservatives to prevent oxidation of produce; butchering livestock and poultry; cleaning fish; and the pasteurization of milk.

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

- 9. The authority citation for 7 CFR Part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, 17, Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

- 10. In § 226.22, paragraph (n) is added to read as follows:

§ 226.22 Procurement standards.

* * * * *

(n) *Geographic preference.* (1) Institutions participating in the Program

may apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products. When utilizing the geographic preference to procure such products, the institution making the purchase has the discretion to determine the local area to which the geographic preference option will be applied;

(2) For the purpose of applying the optional geographic preference in paragraph (n)(1) of this section, “unprocessed locally grown or locally raised agricultural products” means only those agricultural products that retain their inherent character. The effects of the following food handling and preservation techniques shall not be considered as changing an agricultural product into a product of a different kind or character: Cooling; refrigerating; freezing; size adjustment made by peeling, slicing, dicing, cutting, chopping, shucking, and grinding; forming ground products into patties without any additives or fillers; drying/dehydration; washing; packaging (such as placing eggs in cartons), vacuum packing and bagging (such as placing vegetables in bags or combining two or more types of vegetables or fruits in a single package); addition of ascorbic acid or other preservatives to prevent oxidation of produce; butchering livestock and poultry; cleaning fish; and the pasteurization of milk.

Dated: April 18, 2011.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2011-9843 Filed 4-21-11; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

7 CFR Part 4280

Notice of a Public Meeting on the Rural Energy for America Program

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: The Rural Business-Cooperative Service (RBS) will hold two informational Webinars for the Rural Energy for America Program (REAP) associated with the recently published REAP interim rule and Notice of Funds Availability (NOFA). Participation will be limited for each Webinar to the first two hundred registrants.

DATES: The Webinars will be held on Friday, April 29, 2011, and on Monday, May 2, 2011, from 2 p.m. to 4 p.m. EDT both days. You must register, as

described in the **ADDRESSES** section, by noon EDT April 27, 2011, for the April 29, 2011, Webinar and by noon EDT April 28, 2011, for the May 2, 2011, Webinar.

ADDRESSES: To participate in one of the Webinars, you must register for one of the Webinars by sending an e-mail to: energydivision@wdc.usda.gov. You must include in the SUBJECT line the date of the Webinar for which you wish to participate, and in the body of the e-mail, please provide the participant's name, e-mail address, mailing address, and telephone number. You must submit your e-mail by the applicable deadline listed in the **DATES** section of this notice.

FOR FURTHER INFORMATION CONTACT:

Donnetta Rigney, Rural Business-Cooperative Service, U.S. Department of Agriculture, Stop 3225, 1400 Independence Avenue, SW., Washington, DC 20250-3221, Telephone: (202) 720-9812.

SUPPLEMENTARY INFORMATION: The REAP interim rule and the NOFA were published in the **Federal Register** on April 14, 2011. In order to familiarize the public with the content of the REAP interim rule, representatives of the Department of Agriculture are conducting the two Webinars. The purpose of these Webinars is to provide information on the interim rule for the Rural Energy for America Program, focusing on the provisions associated with flexible fuel pumps and other significant changes being implemented through the interim rule. Participants will be afforded the opportunity to ask questions on the material included in the presentation.

Please note that formal comments on the interim rule will not be accepted during the Webinar. Instead, the public has an opportunity to comment formally on the interim rule as provided in the interim rule published in the **Federal Register** on April 14, 2011 (76 FR 21110).

All prospective registrants will be notified by the Agency via e-mail if they are or are not among the first two hundred registrants for one of the two Webinars.

Participants are responsible for ensuring their systems are compatible with the Webinar software.

Dated: April 18, 2011.

Judith A. Canales,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2011-9725 Filed 4-21-11; 8:45 am]

BILLING CODE 3410-XY-P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1610

[CPSC Docket No. CPSC-2010-0086]

Third Party Testing for Certain Children's Products; Clothing Textiles: Revisions to Terms of Acceptance of Children's Product Certifications Based on Third Party Conformity Assessment Body Testing Prior to Commission's Acceptance of Accreditation

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of requirements; revision of retrospective testing terms.

SUMMARY: The U.S. Consumer Product Safety Commission (“CPSC,” “Commission,” or “we”) issues this notice amending the terms under which it will accept certifications for children's products based on third party conformity assessment body (laboratory) testing to the flammability regulations at 16 CFR part 1610 that occurred before the Commission's acceptance of the accreditation of the third party conformity assessment body.¹ We are taking this action in response to a request from certain members of the clothing textile industry to reduce unnecessary retesting of clothing textiles that have been tested already and found to be in compliance with CPSC regulations.

DATES: *Effective Date:* The revision announced in this document is effective April 22, 2011.

FOR FURTHER INFORMATION CONTACT:

Robert “Jay” Howell, Assistant Executive Director for the Office of Hazard Identification and Reduction, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; e-mail: rhowell@cpsc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 14(a)(3)(B)(vi) of the CPSA, as added by section 102(a)(2) of the Consumer Product Safety Improvement Act of 2008 (CPSIA), Public Law 110-314, directs the CPSC to publish a notice of requirements for accreditation of third party conformity assessment bodies to assess children's products for conformity with “other children's product safety rules.” Section 14(f)(1) of

¹ The Commission voted 4-0-1 to publish this revision to the notice of requirements for clothing textiles. Commissioners Nancy A. Nord and Anne M. Northup each issued a statement, and the statements can be found at <http://www.cpsc.gov/pr/statements.html>.

CERTIFICATION OF ENROLLMENT
SECOND SUBSTITUTE SENATE BILL 6483

Chapter 215, Laws of 2008

60th Legislature
2008 Regular Session

LOCAL FOOD PRODUCTION

EFFECTIVE DATE: 06/12/08

Passed by the Senate March 11, 2008
YEAS 44 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House March 4, 2008
YEAS 93 NAYS 1

FRANK CHOPP

Speaker of the House of Representatives

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE SENATE BILL 6483** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

Approved March 27, 2008, 4:42 p.m.

FILED

March 28, 2008

CHRISTINE GREGOIRE

Governor of the State of Washington

**Secretary of State
State of Washington**

SECOND SUBSTITUTE SENATE BILL 6483

AS AMENDED BY THE HOUSE

Passed Legislature - 2008 Regular Session

State of Washington

60th Legislature

2008 Regular Session

By Senate Ways & Means (originally sponsored by Senators Hatfield, Honeyford, Rasmussen, Haugen, Swecker, Tom, Morton, Rockefeller, Fraser, Hargrove, Keiser, Kohl-Welles, Brandland, Kilmer, Shin, McDermott, Kauffman, Murray, Hobbs, Kastama, Fairley, Pridemore, Regala, McAuliffe, Jacobsen, Kline, Brown, Franklin, Hewitt, Spanel, Parlette, Oemig, and Roach)

READ FIRST TIME 02/12/08.

1 AN ACT Relating to local food production; amending RCW 43.19.1906;
2 reenacting and amending RCW 43.19.1905 and 28A.335.190; adding a new
3 section to chapter 15.64 RCW; adding a new section to chapter 28A.235
4 RCW; adding a new section to chapter 28A.320 RCW; adding a new section
5 to chapter 43.70 RCW; creating new sections; repealing RCW 43.19.706;
6 and providing expiration dates.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 NEW SECTION. **Sec. 1.** FINDINGS AND INTENT. (1) The legislature
9 recognizes that the benefits of local food production include
10 stewardship of working agricultural lands; direct and indirect jobs in
11 agricultural production, food processing, tourism, and support
12 industries; energy conservation and greenhouse gas reductions; and
13 increased food security through access to locally grown foods.

14 (2) The legislature finds there is a direct correlation between
15 adequate nutrition and a child's development and school performance.
16 Children who are hungry or malnourished are at risk of lower
17 achievement in school.

18 (3) The legislature further finds that adequate nutrition is also
19 necessary for the physical health of adults, and that some communities

1 have limited access to healthy fruits and vegetables and quality meat
2 and dairy products, a lack of which may lead to high rates of diet-
3 related diseases.

4 (4) The legislature believes that expanding market opportunities
5 for Washington farmers will preserve and strengthen local food
6 production and increase the already significant contribution that
7 agriculture makes to the state and local economies.

8 (5) The legislature finds that the state's existing procurement
9 requirements and practices may inhibit the purchase of locally produced
10 food.

11 (6) The legislature intends that the local farms-healthy kids act
12 strengthen the connections between the state's agricultural industry
13 and the state's food procurement procedures in order to expand local
14 agricultural markets, improve the nutrition of children and other at-
15 risk consumers, and have a positive impact on the environment.

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 15.64 RCW
17 to read as follows:

18 FARM-TO-SCHOOL PROGRAM. (1) A farm-to-school program is created
19 within the department to facilitate increased procurement of Washington
20 grown food by schools.

21 (2) The department, in consultation with the department of health,
22 the office of the superintendent of public instruction, the department
23 of general administration, and Washington State University, shall, in
24 order of priority:

25 (a) Identify and develop policies and procedures to implement and
26 evaluate the farm-to-school program, including coordinating with school
27 procurement officials, buying cooperatives, and other appropriate
28 organizations to develop uniform procurement procedures and materials,
29 and practical recommendations to facilitate the purchase of Washington
30 grown food by the common schools. These policies, procedures, and
31 recommendations shall be made available to school districts to adopt at
32 their discretion;

33 (b) Assist food producers, distributors, and food brokers to market
34 Washington grown food to schools by informing them of food procurement
35 opportunities, bid procedures, school purchasing criteria, and other
36 requirements;

1 (c) Assist schools in connecting with local producers by informing
2 them of the sources and availability of Washington grown food as well
3 as the nutritional, environmental, and economic benefits of purchasing
4 Washington grown food;

5 (d) Identify and recommend mechanisms that will increase the
6 predictability of sales for producers and the adequacy of supply for
7 purchasers;

8 (e) Identify and make available existing curricula, programs and
9 publications that educate students on the nutritional, environmental,
10 and economic benefits of preparing and consuming locally grown food;

11 (f) Support efforts to advance other farm-to-school connections
12 such as school gardens or farms and farm visits; and

13 (g) As resources allow, seek additional funds to leverage state
14 expenditures.

15 (3) The department in cooperation with the office of the
16 superintendent of public instruction shall collect data on the
17 activities conducted pursuant to this act and communicate such data
18 biennially to the appropriate committees of the legislature beginning
19 November 15, 2009. Data collected may include the numbers of schools
20 and farms participating and any increases in the procurement of
21 Washington grown food by the common schools.

22 (4) As used in this section, RCW 43.19.1905, 43.19.1906,
23 28A.335.190, and section 3 of this act, "Washington grown" means grown
24 and packed or processed in Washington.

25 NEW SECTION. **Sec. 3.** A new section is added to chapter 28A.235
26 RCW to read as follows:

27 WASHINGTON GROWN FRESH FRUIT AND VEGETABLE GRANTS. (1) The
28 Washington grown fresh fruit and vegetable grant program is created in
29 the office of the superintendent of public instruction. The purpose of
30 the program is to facilitate consumption of Washington grown nutritious
31 snacks in order to improve student health and expand the market for
32 locally grown fresh produce.

33 (2) For purposes of this section, "fresh fruit and vegetables"
34 includes perishable produce that is unprocessed, minimally processed,
35 frozen, dried, or otherwise prepared, stored, and handled to maintain
36 its fresh nature while providing convenience to the user. Producing

1 minimally processed food involves cleaning, washing, cutting, or
2 portioning.

3 (3) The program shall increase the number of school children with
4 access to Washington grown fresh fruits and vegetables and shall be
5 modeled after the United States department of agriculture fresh fruit
6 and vegetable program, as described in 42 U.S.C. Sec. 1769(g). Schools
7 receiving funds under the federal program are not eligible for grants
8 under the Washington grown fresh fruit and vegetable grant program.

9 (4)(a) To the extent that state funds are appropriated specifically
10 for this purpose, the office of the superintendent of public
11 instruction shall solicit applications, conduct a competitive process,
12 and make one or two-year grants to a mix of urban and rural schools to
13 enable eligible schools to provide free Washington grown fresh fruits
14 and vegetables throughout the school day.

15 (b) When evaluating applications and selecting grantees, the
16 superintendent of public instruction shall consider and prioritize the
17 following factors:

18 (i) The applicant's plan for ensuring the use of Washington grown
19 fruits and vegetables within the program;

20 (ii) The applicant's plan for incorporating nutrition, agricultural
21 stewardship education, and environmental education into the snack
22 program;

23 (iii) The applicant's plan for establishing partnerships with
24 state, local, and private entities to further the program's objectives,
25 such as helping the school acquire, handle, store, and distribute
26 Washington grown fresh fruits and vegetables.

27 (5)(a) The office of the superintendent of public instruction shall
28 give funding priority to applicant schools with any of grades
29 kindergarten through eight that: Participate in the national school
30 lunch program and have fifty percent or more of their students eligible
31 for free or reduced price meals under the federal national school lunch
32 act, 42 U.S.C. Sec. 1751 et seq.

33 (b) If any funds remain after all eligible priority applicant
34 schools have been awarded grants, the office of the superintendent of
35 public instruction may award grants to applicant schools having less
36 than fifty percent of the students eligible for free or reduced price
37 meals.

1 (6) The office of the superintendent of public instruction may
2 adopt rules to carry out the grant program.

3 (7) With assistance from the Washington department of agriculture,
4 the office of the superintendent of public instruction shall develop
5 and track specific, quantifiable outcome measures of the grant program
6 such as the number of students served by the program, the dollar value
7 of purchases of Washington grown fruits and vegetables resulting from
8 the program, and development of state, local, and private partnerships
9 that extend beyond the cafeteria.

10 (8) As used in this section, "Washington grown" has the definition
11 in section 2 of this act.

12 **Sec. 4.** RCW 43.19.1905 and 2002 c 299 s 5 and 2002 c 285 s 1 are
13 each reenacted and amended to read as follows:

14 (1) The director of general administration shall establish overall
15 state policy for compliance by all state agencies, including
16 educational institutions, regarding the following purchasing and
17 material control functions:

18 ~~((1))~~ (a) Development of a state commodity coding system,
19 including common stock numbers for items maintained in stores for
20 reissue;

21 ~~((2))~~ (b) Determination where consolidations, closures, or
22 additions of stores operated by state agencies and educational
23 institutions should be initiated;

24 ~~((3))~~ (c) Institution of standard criteria for determination of
25 when and where an item in the state supply system should be stocked;

26 ~~((4))~~ (d) Establishment of stock levels to be maintained in state
27 stores, and formulation of standards for replenishment of stock;

28 ~~((5))~~ (e) Formulation of an overall distribution and
29 redistribution system for stock items which establishes sources of
30 supply support for all agencies, including interagency supply support;

31 ~~((6))~~ (f) Determination of what function data processing
32 equipment, including remote terminals, shall perform in statewide
33 purchasing and material control for improvement of service and
34 promotion of economy;

35 ~~((7))~~ (g) Standardization of records and forms used statewide for
36 supply system activities involving purchasing, receiving, inspecting,
37 storing, requisitioning, and issuing functions, including a standard

1 notification form for state agencies to report cost-effective direct
2 purchases, which shall at least identify the price of the goods as
3 available through the division of purchasing, the price of the goods as
4 available from the alternative source, the total savings, and the
5 signature of the notifying agency's director or the director's
6 designee;

7 ~~((+8+))~~ (h) Screening of supplies, material, and equipment excess
8 to the requirements of one agency for overall state need before sale as
9 surplus;

10 ~~((+9+))~~ (i) Establishment of warehouse operation and storage
11 standards to achieve uniform, effective, and economical stores
12 operations;

13 ~~((+10+))~~ (j) Establishment of time limit standards for the issuing
14 of material in store and for processing requisitions requiring
15 purchase;

16 ~~((+11+))~~ (k) Formulation of criteria for determining when
17 centralized rather than decentralized purchasing shall be used to
18 obtain maximum benefit of volume buying of identical or similar items,
19 including procurement from federal supply sources;

20 ~~((+12+))~~ (l) Development of criteria for use of leased, rather than
21 state owned, warehouse space based on relative cost and accessibility;

22 ~~((+13+))~~ (m) Institution of standard criteria for purchase and
23 placement of state furnished materials, carpeting, furniture, fixtures,
24 and nonfixed equipment, in newly constructed or renovated state
25 buildings;

26 ~~((+14+))~~ (n) Determination of how transportation costs incurred by
27 the state for materials, supplies, services, and equipment can be
28 reduced by improved freight and traffic coordination and control;

29 ~~((+15+))~~ (o) Establishment of a formal certification program for
30 state employees who are authorized to perform purchasing functions as
31 agents for the state under the provisions of chapter 43.19 RCW;

32 ~~((+16+))~~ (p) Development of performance measures for the reduction
33 of total overall expense for material, supplies, equipment, and
34 services used each biennium by the state;

35 ~~((+17+))~~ (q) Establishment of a standard system for all state
36 organizations to record and report dollar savings and cost avoidance
37 which are attributable to the establishment and implementation of
38 improved purchasing and material control procedures;

1 (~~((18))~~) (r) Development of procedures for mutual and voluntary
2 cooperation between state agencies, including educational institutions,
3 and political subdivisions for exchange of purchasing and material
4 control services;

5 (~~((19))~~) (s) Resolution of all other purchasing and material
6 matters which require the establishment of overall statewide policy for
7 effective and economical supply management;

8 (~~((20))~~) (t) Development of guidelines and criteria for the
9 purchase of vehicles, high gas mileage vehicles, alternate vehicle
10 fuels and systems, equipment, and materials that reduce overall energy-
11 related costs and energy use by the state, including investigations
12 into all opportunities to aggregate the purchasing of clean
13 technologies by state and local governments, and including the
14 requirement that new passenger vehicles purchased by the state meet the
15 minimum standards for passenger automobile fuel economy established by
16 the United States secretary of transportation pursuant to the energy
17 policy and conservation act (15 U.S.C. Sec. 2002);

18 (~~((21))~~) (u) Development of goals for state use of recycled or
19 environmentally preferable products through specifications for products
20 and services, processes for requests for proposals and requests for
21 qualifications, contractor selection, and contract negotiations;

22 (v) Development of food procurement procedures and materials that
23 encourage and facilitate the purchase of Washington grown food by state
24 agencies and institutions to the maximum extent practicable and
25 consistent with international trade agreement commitments; and

26 (w) Development of policies requiring all food contracts to include
27 a plan to maximize to the extent practicable and consistent with
28 international trade agreement commitments the availability of
29 Washington grown food purchased through the contract.

30 (2) As used in this section, "Washington grown" has the definition
31 in section 2 of this act.

32 **Sec. 5.** RCW 43.19.1906 and 2006 c 363 s 1 are each amended to read
33 as follows:

34 Insofar as practicable, all purchases and sales shall be based on
35 competitive bids, and a formal sealed, electronic, or web-based bid
36 procedure, subject to RCW 43.19.1911, shall be used as standard
37 procedure for all purchases and contracts for purchases and sales

1 executed by the state purchasing and material control director and
2 under the powers granted by RCW 43.19.190 through 43.19.1939. This
3 requirement also applies to purchases and contracts for purchases and
4 sales executed by agencies, including educational institutions, under
5 delegated authority granted in accordance with provisions of RCW
6 43.19.190 or under RCW 28B.10.029. However, formal sealed, electronic,
7 or web-based competitive bidding is not necessary for:

8 (1) Emergency purchases made pursuant to RCW 43.19.200 if the
9 sealed bidding procedure would prevent or hinder the emergency from
10 being met appropriately;

11 (2) Purchases not exceeding thirty-five thousand dollars, or
12 subsequent limits as calculated by the office of financial management:
13 PROVIDED, That the state director of general administration shall
14 establish procedures to assure that purchases made by or on behalf of
15 the various state agencies shall not be made so as to avoid the thirty-
16 five thousand dollar bid limitation, or subsequent bid limitations as
17 calculated by the office of financial management: PROVIDED FURTHER,
18 That the state purchasing and material control director is authorized
19 to reduce the formal sealed bid limits of thirty-five thousand dollars,
20 or subsequent limits as calculated by the office of financial
21 management, to a lower dollar amount for purchases by individual state
22 agencies if considered necessary to maintain full disclosure of
23 competitive procurement or otherwise to achieve overall state
24 efficiency and economy in purchasing and material control. Quotations
25 from three thousand dollars to thirty-five thousand dollars, or
26 subsequent limits as calculated by the office of financial management,
27 shall be secured from at least three vendors to assure establishment of
28 a competitive price and may be obtained by telephone or written
29 quotations, or both. The agency shall invite at least one quotation
30 each from a certified minority and a certified women-owned vendor who
31 shall otherwise qualify to perform such work. Immediately after the
32 award is made, the bid quotations obtained shall be recorded and open
33 to public inspection and shall be available by telephone inquiry. A
34 record of competition for all such purchases from three thousand
35 dollars to thirty-five thousand dollars, or subsequent limits as
36 calculated by the office of financial management, shall be documented
37 for audit purposes. Purchases up to three thousand dollars may be made

1 without competitive bids based on buyer experience and knowledge of the
2 market in achieving maximum quality at minimum cost;

3 (3) Purchases which are clearly and legitimately limited to a
4 single source of supply and purchases involving special facilities,
5 services, or market conditions, in which instances the purchase price
6 may be best established by direct negotiation;

7 (4) Purchases of insurance and bonds by the risk management
8 division under RCW 43.41.310;

9 (5) Purchases and contracts for vocational rehabilitation clients
10 of the department of social and health services: PROVIDED, That this
11 exemption is effective only when the state purchasing and material
12 control director, after consultation with the director of the division
13 of vocational rehabilitation and appropriate department of social and
14 health services procurement personnel, declares that such purchases may
15 be best executed through direct negotiation with one or more suppliers
16 in order to expeditiously meet the special needs of the state's
17 vocational rehabilitation clients;

18 (6) Purchases by universities for hospital operation or biomedical
19 teaching or research purposes and by the state purchasing and material
20 control director, as the agent for state hospitals as defined in RCW
21 72.23.010, and for health care programs provided in state correctional
22 institutions as defined in RCW 72.65.010(3) and veterans' institutions
23 as defined in RCW 72.36.010 and 72.36.070, made by participating in
24 contracts for materials, supplies, and equipment entered into by
25 nonprofit cooperative hospital group purchasing organizations;

26 (7) Purchases for resale by institutions of higher education to
27 other than public agencies when such purchases are for the express
28 purpose of supporting instructional programs and may best be executed
29 through direct negotiation with one or more suppliers in order to meet
30 the special needs of the institution;

31 (8) Purchases by institutions of higher education not exceeding
32 thirty-five thousand dollars: PROVIDED, That for purchases between
33 three thousand dollars and thirty-five thousand dollars quotations
34 shall be secured from at least three vendors to assure establishment of
35 a competitive price and may be obtained by telephone or written
36 quotations, or both. For purchases between three thousand dollars and
37 thirty-five thousand dollars, each institution of higher education
38 shall invite at least one quotation each from a certified minority and

1 a certified women-owned vendor who shall otherwise qualify to perform
2 such work. A record of competition for all such purchases made from
3 three thousand to thirty-five thousand dollars shall be documented for
4 audit purposes; ~~((and))~~

5 (9) Off-contract purchases of Washington grown food when such food
6 is not available from Washington sources through an existing contract.
7 However, Washington grown food purchased under this subsection must be
8 of an equivalent or better quality than similar food available through
9 the contract and be able to be paid from the agency's existing budget.
10 This requirement also applies to purchases and contracts for purchases
11 executed by state agencies, including institutions of higher education,
12 under delegated authority granted in accordance with RCW 43.19.190 or
13 under RCW 28B.10.029; and

14 (10) Negotiation of a contract by the department of transportation,
15 valid until June 30, 2001, with registered tow truck operators to
16 provide roving service patrols in one or more Washington state patrol
17 tow zones whereby those registered tow truck operators wishing to
18 participate would cooperatively, with the department of transportation,
19 develop a demonstration project upon terms and conditions negotiated by
20 the parties.

21 Beginning on July 1, 1995, and on July 1st of each succeeding odd-
22 numbered year, the dollar limits specified in this section shall be
23 adjusted as follows: The office of financial management shall
24 calculate such limits by adjusting the previous biennium's limits by
25 the appropriate federal inflationary index reflecting the rate of
26 inflation for the previous biennium. Such amounts shall be rounded to
27 the nearest one hundred dollars. However, the three thousand dollar
28 figure in subsections (2) and (8) of this section may not be adjusted
29 to exceed five thousand dollars.

30 As used in this section, "Washington grown" has the definition in
31 section 2 of this act.

32 **Sec. 6.** RCW 28A.335.190 and 2005 c 346 s 2 and 2005 c 286 s 1 are
33 each reenacted and amended to read as follows:

34 (1) When, in the opinion of the board of directors of any school
35 district, the cost of any furniture, supplies, equipment, building,
36 improvements, or repairs, or other work or purchases, except books,
37 will equal or exceed the sum of fifty thousand dollars, complete plans

1 and specifications for such work or purchases shall be prepared and
2 notice by publication given in at least one newspaper of general
3 circulation within the district, once each week for two consecutive
4 weeks, of the intention to receive bids and that specifications and
5 other information may be examined at the office of the board or any
6 other officially designated location: PROVIDED, That the board without
7 giving such notice may make improvements or repairs to the property of
8 the district through the shop and repair department of such district
9 when the total of such improvements or repair does not exceed the sum
10 of forty thousand dollars. The cost of any public work, improvement or
11 repair for the purposes of this section shall be the aggregate of all
12 amounts to be paid for labor, material, and equipment on one continuous
13 or interrelated project where work is to be performed simultaneously or
14 in close sequence. The bids shall be in writing and shall be opened
15 and read in public on the date and in the place named in the notice and
16 after being opened shall be filed for public inspection.

17 (2) Every purchase of furniture, equipment or supplies, except
18 books, the cost of which is estimated to be in excess of forty thousand
19 dollars, shall be on a competitive basis. The board of directors shall
20 establish a procedure for securing telephone and/or written quotations
21 for such purchases. Whenever the estimated cost is from forty thousand
22 dollars up to seventy-five thousand dollars, the procedure shall
23 require quotations from at least three different sources to be obtained
24 in writing or by telephone, and recorded for public perusal. Whenever
25 the estimated cost is in excess of seventy-five thousand dollars, the
26 public bidding process provided in subsection (1) of this section shall
27 be followed.

28 (3) Any school district may purchase goods produced or provided in
29 whole or in part from class II inmate work programs operated by the
30 department of corrections pursuant to RCW 72.09.100, including but not
31 limited to furniture, equipment, or supplies. School districts are
32 encouraged to set as a target to contract, beginning after June 30,
33 2006, to purchase up to one percent of the total goods required by the
34 school districts each year, goods produced or provided in whole or in
35 part from class II inmate work programs operated by the department of
36 corrections.

37 (4) Every building, improvement, repair or other public works
38 project, the cost of which is estimated to be in excess of forty

1 thousand dollars, shall be on a competitive bid process. Whenever the
2 estimated cost of a public works project is one hundred thousand
3 dollars or more, the public bidding process provided in subsection (1)
4 of this section shall be followed unless the contract is let using the
5 small works roster process in RCW 39.04.155 or under any other
6 procedure authorized for school districts. One or more school
7 districts may authorize an educational service district to establish
8 and operate a small works roster for the school district under the
9 provisions of RCW 39.04.155.

10 (5) The contract for the work or purchase shall be awarded to the
11 lowest responsible bidder as defined in RCW 43.19.1911 but the board
12 may by resolution reject any and all bids and make further calls for
13 bids in the same manner as the original call. On any work or purchase
14 the board shall provide bidding information to any qualified bidder or
15 the bidder's agent, requesting it in person.

16 (6) In the event of any emergency when the public interest or
17 property of the district would suffer material injury or damage by
18 delay, upon resolution of the board declaring the existence of such an
19 emergency and reciting the facts constituting the same, the board may
20 waive the requirements of this section with reference to any purchase
21 or contract: PROVIDED, That an "emergency", for the purposes of this
22 section, means a condition likely to result in immediate physical
23 injury to persons or to property of the school district in the absence
24 of prompt remedial action.

25 (7) This section does not apply to the direct purchase of school
26 buses by school districts and educational services in accordance with
27 RCW 28A.160.195.

28 (8) This section does not apply to the purchase of Washington grown
29 food.

30 (9) At the discretion of the board, a school district may develop
31 and implement policies and procedures to facilitate and maximize to the
32 extent practicable, purchases of Washington grown food including, but
33 not limited to, policies that permit a percentage price preference for
34 the purpose of procuring Washington grown food.

35 (10) As used in this section, "Washington grown" has the definition
36 in section 2 of this act.

37 (11) As used in this section, "price percentage preference" means
38 the percent by which a responsive bid from a responsible bidder whose

1 product is a Washington grown food may exceed the lowest responsive bid
2 submitted by a responsible bidder whose product is not a Washington
3 grown food.

4 NEW SECTION. Sec. 7. A new section is added to chapter 28A.320
5 RCW to read as follows:

6 (1) School districts may operate school gardens or farms, as
7 appropriate, for the purpose of growing fruits and vegetables to be
8 used for educational purposes and, where appropriate, to be offered to
9 students through the district nutrition services meal and snack
10 programs. All such foods used in the district's meal and snack
11 programs shall meet appropriate safety standards.

12 (2) If a school operates a school garden or farm, students
13 representing various student organizations, including but not limited
14 to vocational programs such as the FFA and 4-H, shall be given the
15 opportunity to be involved in the operation of a school garden or farm.

16 (3) When school gardens or farms are used to educate students about
17 agricultural practices, students shall be afforded the opportunity to
18 learn about both organic and conventional growing methods.

19 NEW SECTION. Sec. 8. A new section is added to chapter 43.70 RCW
20 to read as follows:

21 (1) The department shall adopt rules authorizing retail operation
22 farms stores, owned and operated by a farmer and colocated with a site
23 of agricultural production, to participate in the women, infant, and
24 children farmers market nutrition program to provide locally grown,
25 nutritious, unprepared fruits and vegetables to eligible program
26 participants.

27 (2) Such rules must meet the provisions of 7 C.F.R. part 3016,
28 uniform administrative requirements for grants and cooperative
29 agreements to state and local governments, as it existed on the
30 effective date of this section, or such subsequent date as may be
31 provided by the department by rule, consistent with the purposes of
32 this section.

33 NEW SECTION. Sec. 9. FARMERS MARKET TECHNOLOGY IMPROVEMENT PILOT
34 PROGRAM. (1) If funds are provided for this specific purpose, the
35 Washington state farmers market technology improvement pilot program is

1 created in the department of social and health services to assist
2 farmers markets develop the capability to accept wireless electronic
3 payment cards, including electronic benefits transfers. The purpose of
4 this program is to increase access to fresh fruits and vegetables and
5 quality meat and dairy for all Washington residents and to increase the
6 number of food stamp recipients using food stamp benefits through
7 electronic benefits transfer at farmers markets.

8 (2) The department shall work with farmers markets and appropriate
9 associations to ensure that the program serves a balance of rural and
10 urban farmers markets.

11 (3) The department shall submit data on the electronic benefits
12 transfer activities conducted pursuant to this section to the
13 appropriate committees of the legislature each biennium beginning on
14 November 15, 2009. Data collected may include information illustrating
15 the demand for the technology and numbers of people using the
16 technology for electronic benefits transfer.

17 (4) This section expires July 1, 2010.

18 NEW SECTION. **Sec. 10.** FARMERS TO FOOD BANKS PILOT PROGRAM. (1)
19 If funds are provided for this specific purpose, the farmers to food
20 banks pilot program is created. In implementing this program, the
21 department of community, trade, and economic development shall conduct
22 a request for proposals to select pilot site communities statewide.
23 Any nonprofit entity qualified under section 501(c)(3) of the internal
24 revenue code that is in the business of delivering social services may
25 submit a proposal. No more than five pilot communities shall be
26 selected based on the following:

27 (a) One pilot shall be designated in an urban area that has been
28 negatively impacted by a mass transit infrastructure program, is
29 ethnically diverse, and is located in a city with over five hundred
30 thousand residents;

31 (b) At least one pilot must be located east of the crest of the
32 Cascades; and

33 (c) At least one pilot must be in a rural county as defined in RCW
34 43.160.020.

35 (2) Funds shall be used in pilot communities for the food bank
36 system to contract with local farmers to provide fruits, vegetables,

1 dairy, and meat products for distribution to low-income people at local
2 designated food banks.

3 (3) The department shall collect data on the activities conducted
4 pursuant to this section and communicate biennially to the appropriate
5 committees of the legislature beginning November 15, 2009. Data
6 collected may include information illustrating the demand and numbers
7 of people served.

8 (4) This section expires July 1, 2010.

9 NEW SECTION. **Sec. 11.** RCW 43.19.706 (Purchase of Washington
10 agricultural products--Report to the legislature) and 2002 c 166 s 2
11 are each repealed.

12 NEW SECTION. **Sec. 12.** This act may be known and cited as the
13 local farms-healthy kids act.

14 NEW SECTION. **Sec. 13.** Captions used in this act are not any part
15 of the law.

16 NEW SECTION. **Sec. 14.** If any part of this act is found to be in
17 conflict with federal requirements that are a prescribed condition to
18 the allocation of federal funds to the state, the conflicting part of
19 this act is inoperative solely to the extent of the conflict and with
20 respect to the agencies directly affected, and this finding does not
21 affect the operation of the remainder of this act in its application to
22 the agencies concerned. Rules adopted under this act must meet federal
23 requirements that are a necessary condition to the receipt of federal
24 funds by the state.

25 NEW SECTION. **Sec. 15.** If specific funding for the purposes of
26 this act, referencing this act by bill or chapter number, is not
27 provided by June 30, 2008, in the omnibus appropriations act, this act
28 is null and void.

Passed by the Senate March 11, 2008.

Passed by the House March 4, 2008.

Approved by the Governor March 27, 2008.

Filed in Office of Secretary of State March 28, 2008.



**United States
Department of
Agriculture**

Food and
Nutrition
Service

3101 Park
Center Drive
Alexandria, VA
22302-1500

DATE: February 1, 2011

MEMO CODE: SP_18 - 2011

SUBJECT: Procurement Geographic Preference Q&As

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

In light of recent Farm to School efforts to connect schools with local or regional farmers and the need for guidance and technical assistance on the State and local levels, we have created Q&As to further explain the geographic preference option. The purpose of this memorandum is to provide Q&As on the application of the geographic preference option in procurement of unprocessed locally grown or locally raised agricultural products.

We encourage State agencies to share these Q&As with their counterparts at other State Departments (e.g., Department of Agriculture or Department of Health) that are involved in Farm to School activities.

Original Signed

Cynthia Long
Director
Child Nutrition Division

Geographic Preference

Applying Geographic Preference

Q1: The 2008 Farm Bill amended the Richard B. Russell National School Lunch Act (NSLA) to direct the Secretary of Agriculture to encourage institutions operating Child Nutrition Programs to purchase unprocessed locally grown and locally raised agricultural products. Does USDA define the geographic area that is considered to be local?

A: No, USDA does not define the geographic area that is considered to be local; the decision is left to the purchasing institution, such as a school food authority (SFA) making the purchase or the State agency (SA) making purchases on behalf of SFAs. In other words, the purchasing institutions, such as SAs, SFAs, child care institutions and Summer Food Service Program (SFSP) sponsors, may specifically identify the geographic area within which unprocessed locally raised and locally grown agricultural products will originate. The purchasing institution must not define local in a manner that unnecessarily restricts free and open competition.

Q2: Does the geographic preference option for the procurement of unprocessed agricultural products apply to all Federal Child Nutrition Programs?

A: Institutions receiving funds through the Federal Child Nutrition Programs may apply an optional geographic preference in procurement of unprocessed locally grown or locally raised agricultural products, including the National School Lunch Program (NSLP), School Breakfast Program (SBP), Fresh Fruit and Vegetable Program (FFVP), Special Milk Program (SMP), Child and Adult Care Food Program (CACFP) and Summer Food Service Program (SFSP).

Q3: Can an SFA issue a solicitation that states, “We will only accept locally grown agricultural products from a State”?

A: No, the Federal laws allow institutions receiving funds through the Child Nutrition Programs to apply a geographic preference when procuring locally grown or locally raised agricultural products, as noted in the preamble of the geographic preference rule. The exclusion of all non-locally grown agricultural products is not a preference but rather a requirement of bidding and therefore is overly restrictive.

Q4: An SFA defined “local” as the entire State and issued a Request for Proposal (RFP). Can the SFA give a bidder geographic preference points if the bidder is incorporated outside of the State with its principal place of business outside of the State?

A: Yes, geographic preference in a procurement does not preclude a bidder from outside the specified geographic area from competing for, and possibly being awarded, the contract subject to geographic preference. The geographic preference applies to the unprocessed locally grown and locally raised agricultural product; it is irrelevant whether the bidder’s business is incorporated or has a principal place of business in the State.

Q5: An SFA wants to issue an Invitation for Bid (IFB). How does an SFA incorporate geographic preference points into an IFB?

A: An IFB doesn’t generally include preference points; instead, an SFA determines who is responsive based on the solicitation, and then from the responsive bidders the SFA awards the contract to the bidder with the lowest price. Therefore, it may not be feasible to incorporate “points” into an IFB in the same way as is done with an RFP. However, an SFA could write in the specifications that, for example, an apple must have been picked within one day of delivery or must have been harvested within a certain time period.

Additionally, the solicitation document must clearly outline how all bids will be evaluated, including the application of geographic preference in the scoring criteria. The following is an example of one approach on how to incorporate geographic preference points in an IFB:

Geographic preference points in an IFB would be applied after the SFA determined the three bidders with the lowest price. The three bidders with the lowest price would be given a total of ten geographic preference points if those bidders met the geographic preference. In order to determine the winning bidder, the scoring criteria would clearly state that one point would equal one cent; in other words, ten points would translate into ten cents. If one or more of the responsive bidders with the lowest price met the geographic preference, ten cents would be taken off of their respective prices and that bidder could potentially win the bid. Note: Deducting ten cents from the prices of responsive bidders that met the geographic preference only applies to determining the winning bidder and would not affect the actual price paid to a bidder.

In the following example, Bidder 2 meets the geographic preference and is given ten points which translates into deducting ten cents from Bidder 2's price. In this example, Bidder 2 still doesn't win the bid because Bidder 1 has a lower price.

	Bidder 1	Bidder 2	Bidder 3
Price	\$1.97	\$2.10	\$2.03
Meets geographic preference?	No	Yes (10 points)	No
Price with preference points	\$1.97	\$2.00	\$2.03

Q6: An SFA would like to prescribe geographic preference as a percentage in their solicitation (IFB or RFP). For example, the SFA would like to give a ten percent price

preference to bidders offering unprocessed locally grown and locally raised agricultural products. Can an SFA prescribe geographic preference as a percentage in their solicitation?

A: Yes, an SFA may prescribe geographic preference in their solicitation in terms of actual percentage (e.g., ten percent price preference). Geographic preference can be prescribed in terms of points or percentages. The solicitation document must clearly outline the scoring criteria and the method in which the criteria will be evaluated.

Q7: How many geographic preference points can an SFA assign to geographic preference? What is the maximum price percentage an SFA can assign to geographic preference?

A: The Federal regulations do not prescribe the number of preference points or maximum price percentage an SFA can assign to geographic preference. Generally speaking, any price preference (prescribed as points or percentage) impacts free and open competition. However, geographic preference may have a greater or lesser impact on free and open competition depending on the characteristics of the market. The SFA's application of the geographic preference option must leave an appropriate number of qualified firms, given the nature and size of the procurement, to compete for the contract, as it is imperative that the SFA does not unnecessarily restrict free and open competition.

Q8: Can SFAs split up large purchases into smaller amounts and thereby fall under the small purchase threshold?

A: SFAs cannot intentionally split purchases in order to fall below the Federal, State, or local small purchase threshold in an effort to avoid more rigorous procurement practices. However, there may be some instances in which the characteristics of a product or market support the need to separate selected products from the overall food procurement. For example, milk and bread are commonly procured separately because there are fundamental differences between them and other food products, such as shorter shelf-life, specialized pricing mechanisms, and durability. Similarly, an SFA may find that fresh produce may be considered a

separate market given that it shares similar characteristics as bread and milk, and may want to separate this procurement from their overall food procurement.

Q9: An SFA would like to conduct a procurement under the small purchase threshold. Can the SFA procure unprocessed locally grown or locally raised agricultural products directly from a local farmer?

A: Yes; however, the procurement must be conducted in a manner that maximizes full and open competition. According to the Federal regulations, the SFA can conduct a procurement under the small purchase threshold if the procurement is under \$100,000 in value. States or localities may set a lower small purchase threshold and thereby impose more formal procedures. The SFAs should put the number, quality and type of goods in writing before contacting any potential offerors. When using the small purchase threshold, we recommend that at least three sources be contacted who are eligible, able and willing to provide the unprocessed locally grown or locally raised agricultural product. Contacting a minimum of three sources ensures that an adequate number of potential offerors will be afforded the opportunity to respond to the solicitation.

Q10: An SFA would like to conduct a procurement under the small purchase threshold. Can the SFA procure unprocessed locally grown or locally raised agricultural products directly from a teacher that works for one of the schools in the SFA's school district?

A: The procurement must be conducted in a manner that maximizes full and open competition. The Federal regulations prohibit an employee, officer or agent of the grantee or subgrantee (i.e., SA or SFA) to participate in the selection, award or administration of a contract if a conflict of interest, real or apparent, would be involved. A contract award to a teacher in an SFA's school district creates an appearance of impropriety and generates the question of whether or not free and open competition has been circumvented. Therefore, a conflict of interest, real or apparent, may be involved if a teacher that works for one of the schools in the SFA's school district is awarded a contract.

Q11: May an SFA give geographic preference to farmers in a neighboring country (i.e., Mexico or Canada) for foreign unprocessed agricultural products when procuring unprocessed locally grown or locally raised agricultural products?

A: An SFA must adhere to the Buy American clause which requires SFAs to purchase domestically grown foods to the maximum extent possible. An SFA may purchase foreign goods only if the two rare exceptions to the Buy American provision are met: (1) the product is not produced or manufactured in the U.S. in sufficient and reasonable available quantities of a satisfactory quality; and (2) competitive bids reveal the costs of a U.S. product is significantly higher than the foreign product.

Q12: A State regulation requires State governmental entities to give geographic preference to local State farmers and prescribes a method on how geographic preference can be incorporated in the State governmental entities' solicitation. Is an SFA required to follow the State's regulation on geographic preference?

A: No. Under the principles of federalism, a State has the right to create a regulation of this nature; however, the application of the State's regulation to the Federal Child Nutrition Programs is an entirely different matter. Please keep in mind that States cannot mandate through law or policy that institutions apply a geographic preference when conducting procurements for the Federal Child Nutrition Programs, because the National School Lunch Act (NSLA) grants this authority directly to the purchasing institution (i.e., SFA or SA making purchases on behalf of the SFA).

Q13: Where does an SFA go to obtain help in developing bid sheets that use geographic preference? Does USDA have examples of solicitations that use geographic preference?

A: An SFA should start by contacting its SA for assistance in developing bid sheets and for examples of solicitations that use geographic preference. USDA is in the process of creating

tools that will assist in this area. USDA has created an online training on procurement, *State Agency Guidance on Procurement*, that can be found at <http://www.nfsmi.org>. Additionally, the USDA Farm to School website (<http://www.fns.usda.gov/cnd/f2s/>) provides information on the procurement requirements, as well as Q&As directly related to local food purchases.

Unprocessed Agricultural Product

Q14: Can an SFA apply the geographic preference option in the procurement of ground beef?

A: As we stated in our policy memo dated November 13, 2009, we further amended the previous guidelines regarding what is to be considered to be unprocessed locally grown or locally raised agricultural products. In our view, for the purpose of applying a geographic procurement preference in the Child Nutrition Programs, unprocessed agricultural products means only those agricultural products that retain their inherent character. Size adjustment made by grinding does not change an agricultural product into a product of different kind or character. Therefore, an SFA can apply the geographic preference option in the procurement of ground beef if no other items such as additives or preservatives are added to the ground beef.

Q15: Can an SFA give geographic preference when procuring a frozen bag of combination local vegetables (e.g., broccoli, cauliflower and carrots) from a bidder?

A: Yes, the inherent character of the vegetables is retained and not modified by freezing or combining vegetables in a bag.

Q16: Can an SFA give geographic preference when procuring fresh local vegetables in portion sized or single serving bags (e.g., small bags of carrots) from a bidder?

A: Yes, the inherent character of the vegetables is retained and not modified by placing vegetables in portion sized or single serving bags.

Q17: Can an SFA give geographic preference when procuring canned local vegetables from a bidder?

A: No, the inherent character of the vegetables is not retained because the heating process involved in canning changes the agricultural product into a product of a different kind or character.



**United States
Department of
Agriculture**

Food and
Nutrition
Service

3101 Park
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Alexandria, VA
22302-1500

MEMO CODE: SP 32-2009

DATE: July 29, 2009

SUBJECT: School Garden Q&As

TO: Regional Directors
Child Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

Recently, we have received several questions regarding the operation of a school garden. Attached are questions and answers to address this issue. As in the past, please share this information with your school food authorities.

Original Signed

CYNTHIA LONG
Director
Child Nutrition Programs

Enclosure

1. **Q:** Can the school food service use funds from the nonprofit school food service account to purchase seeds for a school garden?

A: Yes, with the understanding that the garden is used within the context of the program, i.e. selling the food or providing food in the classroom as part of an educational lesson.

2. **Q:** Can the school food service use funds from the nonprofit school food service account to purchase items for the school garden such as fertilizer, watering cans, rakes, etc.?

A: Yes, as long as the items are used for the purpose of starting and maintaining the garden.

3. **Q:** Can a school sell food grown in their school garden that was funded using the nonprofit school food service account?

A: Yes, as long as the revenue from the sale of the food accrues back to the nonprofit school food service account. Schools can serve the produce as part of a reimbursable meal or sell it a la carte, to parents, to PTA members, at a roadside stand, etc.

4. **Q:** Are there health/safety issues involved with school gardens?

A: Yes. SFAs need to familiarize themselves with the Federal, State, and local requirements regarding health and sanitation issues.

5. **Q:** Can the school food service purchase produce from another school organization that is maintaining and managing the garden, such as Future Farmers of America (FFA)?

A: Yes, the school food service may purchase produce from a garden run by a school organization such as FFA, which is an agricultural education program for students.

6. **Q:** Can funds received through the Fresh Fruits and Vegetables Program (FFVP) be used to purchase seeds/tools/equipment for a school garden?

A: No. FFVP funds may not be used for the purchase of any materials for school gardens.

7. **Q:** What if there is excess produce from the garden left over at the end of the school year?

A: The school should first see if the excess food can be used to benefit another program such as the SFSP. If that is not possible, they could try selling the food (as always, the profit must accrue back to the nonprofit school food service account) or donate it in accordance with State and local health/safety regulations.



United States
Department of
Agriculture

Food and
Nutrition
Service

3101 Park
Center Drive
Alexandria, VA
22302-1500

DATE: July 8, 2011

MEMO CODE: SP 42 - 2011

SUBJECT: Child Nutrition Reauthorization 2010: Local School Wellness Policies

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

Section 204 of the Healthy, Hunger-Free Kids Act of 2010 (the Act), Public Law 111-296, added Section 9A to the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1758b), *Local School Wellness Policy Implementation*. The provisions set forth in Section 204 expand upon the previous local wellness policy requirement from the Child Nutrition and Special Supplemental Nutrition Program for Women, Infants and Children (WIC) Reauthorization Act of 2004 (Public Law 108-265).

This memorandum provides information on the new requirements for local wellness policies so that local educational agencies (LEAs) can begin reviewing their policies for the coming School Year 2011-2012, and begin moving forward on implementing the new requirements. The Food and Nutrition Service (FNS) anticipates issuing a proposed rule addressing the new requirements in Fall 2012 and providing technical assistance materials throughout the implementation of this provision. The public will have an opportunity to comment on the rule. FNS is hopeful that the operational experiences LEAs gain from implementing Section 204 will provide an informed body of comment on the proposed rule to be issued.

Summary of Section 204

Local wellness policies are an important tool for parents, LEAs and school districts to promote student wellness, prevent and reduce childhood obesity, and provide assurance that school meal nutrition guidelines meet the minimum Federal school meal standards. While many LEAs included plans for implementation in their written wellness policies as required by the Child Nutrition and WIC Reauthorization Act of 2004, they were not required to report on policy compliance and implementation; as a result, implementation and evaluation efforts were not monitored or conducted regularly. Section 204 of the Act

strengthens wellness policies by emphasizing ongoing implementation and assessment. This provision also supports a robust process at the community level, including the expansion of the team of collaborators participating in the wellness policy development to include more members from the community. This approach is intended to foster broad-based community support for the development and implementation of effective wellness policies.

The Act retains the requirement that each LEA participating in the National School Lunch Program (NSLP) and/or School Breakfast Program (SBP) establish, for all schools under its jurisdiction, a local school wellness policy. The Act incorporates new requirements for the content of the policies as well as general requirements for the development, implementation, dissemination, and assessment of the policies. These additional requirements are described below.

The Act also requires the Department of Agriculture (USDA) to promulgate regulations that provide the framework and guidelines for these local wellness policies, and to provide information and technical assistance to LEAs, school food authorities, and State agencies (SAs) for use in establishing healthy school environments that are intended to promote student health and wellness.

Elements of the Local Wellness Policy

As was previously required, local wellness policies must include, at a minimum, goals for nutrition education, physical activity, and other school-based activities that promote student wellness, as well as nutrition guidelines to promote student health and reduce childhood obesity for all foods available on each school campus. The Act added the requirement that local wellness policies include goals for nutrition promotion.

Local Discretion

As previously required, LEAs can determine the specific policies appropriate for the schools under their jurisdiction, provided that those policies address all of the required elements specified in the Act.

Public Involvement

LEAs are now required to permit teachers of physical education and school health professionals as well as parents, students, and representatives of the school food authority, the school board, school administrators, and the public to participate in the development of wellness policies. The Act also expanded the purpose of the team of collaborators beyond the development of a local wellness policy to also include the implementation of the local wellness policy with periodic review and updates.

Implementation, Periodic Assessment, and Public Updates

The Act requires LEAs to inform and update the public (including parents, students, and others in the community) about the content and implementation of the local wellness policies. LEAs are also required to measure periodically and make available to the public an assessment of the local wellness policy, including:

- The extent to which schools are in compliance with the local wellness policy;
- The extent to which the LEA's local wellness policy compares to model local school wellness policies; and
- The progress made in attaining the goals of the local wellness policy.

Finally, the Act requires LEAs to designate one or more LEA officials or school officials, as appropriate, to ensure that each school complies with the local school wellness policy.

Recommended Actions for School Year 2011-2012

Section 204 of the Act was effective as of October 1, 2010. Therefore, State agencies should ensure that LEAs are aware of the changes and begin reviewing their local wellness policies during School Year 2011-2012 and, to the extent practicable, begin moving forward on implementing the new requirements.

LEAs may find it helpful to consult the local wellness policy reference materials and sample policies on the FNS website at:

<http://www.fns.usda.gov/tn/healthy/wellnesspolicy.html>. FNS will be updating these materials to reflect the new requirements; however these materials can still be a useful starting point for LEAs working to strengthen their local wellness policies to meet the requirements of the new law. FNS intends to describe the concept of *nutrition promotion* more clearly in future technical assistance materials, so that LEAs can add these goals to their local wellness policy.

There are a number of ways in which LEAs can implement the requirement for informing and updating the public about the content and implementation of the local wellness policies. Acceptable methods may include developing or disseminating printed or electronic materials to families of school children and other members of the school community at the beginning of the school year, and posting the local wellness policies and an assessment of its implementation on the district or school website. Whatever method is chosen, the information must be made available to the public by LEAs in an accessible, easily understood manner. For School Year 2011-2012, LEAs should be working toward developing a reasonable method to implement this requirement, with the goal of making the information public by the end of the school year.

Technical Assistance

Some LEAs will be able to implement several of the requirements of Section 204 relatively easily. However, we recognize that LEAs will need further guidance from FNS, particularly in the areas of model local wellness standards and assessing and evaluating local wellness policies. FNS is working with our partners at the Department of Health and Human Services/CDC and the Department of Education to provide technical assistance on local wellness policies for LEAs. The three agencies are working on a draft plan that will provide an overview of local wellness policies, identify gaps according to an environmental scan, and outline the technical assistance outcomes, services, and activities that the three agencies intend to address. In Summer 2011, this plan will be posted to the FNS website for the Healthy, Hunger-Free Kids Act (HHFKA): http://www.fns.usda.gov/cnd/Governance/Legislation/CNR_2010.htm. We will provide more information on a periodic basis as we move forward and develop resources.

The Centers for Disease Control and Prevention (CDC) has a number of resources to assist LEAs in designing, implementing, and promoting elements of local wellness policies, which are available on the CDC website: <http://www.cdc.gov/HealthyYouth>. In addition, CDC will soon be releasing the *School Health Guidelines to Promote Healthy Eating and Physical Activity Among Youth*, which presents evidence-based guidance for schools on how to promote healthy eating and physical activity in schools. The guidelines serve as the foundation for developing, implementing, and evaluating school-based healthy eating and physical activity policies and practices for K-12th grade students. Each of the nine guidelines is accompanied by a series of strategies to facilitate implementation. The Guidelines recognize that not all schools will be able to implement all guidelines and strategies; they represent a gold standard for schools to work toward. SAs and LEAs may look for links to these resources on the FNS HHFKA website this summer. To the extent practicable, LEAs should refer to these resources to assist them in adding additional elements to their existing local wellness policies.

Implementation Oversight and Proposed Rule

SAs must continue to ensure local wellness policies are in place when conducting administrative reviews. As needed, SAs should offer technical assistance to LEAs to assist them in identifying practical means of implementing the new requirements. Many requirements can be implemented easily, though others will require additional guidance.

FNS expects to publish a proposed rule on local wellness policies in Fall 2012. The public will have an opportunity to comment on the rule. We are hopeful that the operational experiences LEAs gain from implementing Section 204 will provide an informed body of comment on the proposed rule.

SAs should direct any questions concerning this guidance to their FNS Regional Office.

Original Signed

for Cynthia Long
Director
Child Nutrition Division